



DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

[Docket No. ETA-2023-0002]

RIN 1205-AC11

Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Labor (Department or USDOL) invites interested parties to provide information relating to the disclosure of confidential wage records under the Department's regulations governing the confidentiality and disclosure of State UC information. The Department is considering comprehensive updates to the UC confidentiality regulations and the information received in response to this RFI will inform and be considered by the Department as it reviews the UC confidentiality regulations, which may result in the development of a notice of proposed rulemaking (NPRM) to revise the regulations in a manner that would address the evolution of both information technology (IT) and the public workforce system as these changes relate to the required and permissible disclosure of confidential UC data.

DATES: Interested persons are invited to submit written comments on the request for information on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by Docket No. ETA-2023-0002 and Regulatory Identification Number (RIN) 1205-AC11, through the Federal

eRulemaking Portal: <https://www.regulations.gov>. Search for the above-referenced RIN, open the RFI, and follow the on-screen instructions for submitting comments.

All submissions received must include the agency name and docket number for this pre-rulemaking: “RIN 1205-AC11.” Please be advised that the Department may post all comments received that relate to this RFI without changes to <https://www.regulations.gov>, including any personal information, confidential business information, and other sensitive information provided. The <https://www.regulations.gov> website is the Federal eRulemaking Portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information (either about themselves or others), such as Social Security numbers, personal addresses, telephone numbers, and email addresses included in their comments, as well as any other information the commenter does not want to be made public, as such information may become easily available to the public via the <https://www.regulations.gov> website. The responsibility to safeguard personal information, confidential business information, and other sensitive information remains with the commenter.

ETA reminds commenters that it is subject to the disclosure requirements of the Freedom of Information Act (FOIA) and, though it will seek to protect information to the extent permitted under any applicable FOIA exemptions, ETA may be required to disclose information in response to FOIA requests or in accordance with a court order.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> (search using RIN 1205-AC11 or Docket No. ETA-2023-0002).

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5641, Washington, DC 20210, Telephone: (202) 693-3700 (voice) (this is not a toll-free number), 1-877-872-5627, or 1-800-326-2577 (telecommunications device for the deaf).

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I. Background

In September 2006, the Department issued a final rule (71 FR 56830, Sept. 27, 2006) that set forth the statutory confidentiality and disclosure requirements of title III of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA) concerning unemployment compensation (UC) information and revised the Income and Eligibility Verification System¹ (IEVS) regulations at 20 CFR part 603 (hereinafter “2006 Final Rule”).

The 2006 Final Rule implemented Federal UC laws concerning confidentiality and disclosure of UC information and established uniform minimum requirements for the payment of costs, safeguards, and data-sharing agreements to ensure responsible use when UC information is disclosed. The confidentiality requirement implemented by the 2006 Final Rule was derived from the “methods of administration” requirement of Section (Sec.) 303(a)(1) of the SSA. The Department interprets the methods of administration requirement of the SSA to require State UC law to provide for maintaining the confidentiality of certain UC information. The disclosure requirements are from Secs. 303(a)(7), (c)(1), (d), (e), (f), (h), and (i) of the SSA, and Sec. 3304(a)(16) of the FUTA.

¹ The IEVS is a system of required information sharing primarily among State and local agencies administering several federally assisted programs.

The 2006 Final Rule revised the regulations at 20 CFR part 603 to implement all of these statutory provisions.

These statutory provisions each address disclosure to governmental entities, but they vary with respect to the specific information to be disclosed and the terms and conditions of disclosure. The confidentiality and disclosure requirements in title III of the SSA relating to UC information are conditions for receipt of grants by the States for UC administration. The disclosure requirements in the FUTA are conditions required of a State in order for employers in that State to receive credit against the Federal unemployment tax under 26 U.S.C. 3302. Other Federal laws may require the use or disclosure of confidential UC information. UC data represents an important census of payroll employment in addition to records of unemployment benefits receipt, and Federal law permits and mandates sharing of this confidential information in important situations.

In implementing these confidentiality requirements for UC information and parameters for its disclosure, the 2006 Final Rule defined types of information related to employment, unemployment claims, and wage records and outlined the conditions under which disclosures are permitted or required. For the purpose of this RFI, disclosure means the State UC agency providing or revealing any information in its records to any other entity. Permissible disclosures of confidential UC information include disclosures of information: in the public domain; about essential program activities; about an individual or employer to that individual or employer; on the basis of informed consent; to a public official in the performance of their duties and to an agent or contractor of such a public official; collected for statistical purposes in cooperation with the Bureau of Labor Statistics (BLS); or required to be disclosed by a court order or Federal law. Required disclosures of confidential UC information include disclosures of information necessary for the proper administration of the UC program or relevant to the IEVS.

Additionally, the 2006 Final Rule set forth parameters for the payment of costs related to disclosures of confidential UC information, generally requiring recipients to pay the non-incidental costs of disclosures for purposes other than administration of the UC program and for which the disclosing State UC agency does not receive a reciprocal benefit. Finally, the 2006 Final Rule also established safeguards that State UC agencies must require of recipients who obtain confidential UC information, requirements for data-sharing agreements with parties obtaining confidential UC information, and requirements for State UC agencies to notify claimants and employers about how their confidential UC information may be requested and used.

In 2016, the Department issued a final rule (81 FR 56072; Aug. 19, 2016) to amend 20 CFR part 603 to help States comply with new requirements under the Workforce Innovation and Opportunity Act (WIOA) to assess the performance of certain federally funded employment and training programs (hereinafter “WIOA Final Rule”). WIOA requires States to use “quarterly wage records” in these performance assessments, which the Department defined in the WIOA implementing regulation at 20 CFR 677.175(b) to include a program participant’s Social Security number (SSN), participant wages after exiting the program, and identifying employer information, information that already was included in the definition of “wage information” in part 603 (§ 603.2(k)) and collected by State UC agencies. To facilitate the performance reporting required of States under WIOA, the WIOA Final Rule expanded the set of “public officials,” enumerated in § 603.2(d), to whom a State may disclose these confidential wage records to include officials from public postsecondary educational organizations; State performance accountability and customer information agencies; the chief elected officials of local workforce development areas; and a public State educational authority, agency, or institution. In conjunction with this expanded definition, § 603.5(e) was amended to explicitly allow confidential UC information to be disclosed to a public official for

limited, specified WIOA purposes, and § 603.6(b)(8) was adopted to make such disclosures mandatory when doing so would not interfere with the efficient administration of State UC law.

II. Considering Revision to Part 603

The Department is considering a regulatory update to 20 CFR part 603 that would incorporate a requirement for States to disclose confidential UC information to the Department's Office of Inspector General (OIG) for oversight and audits. In addition, the Department is considering addressing several other items that States and stakeholders have raised over the years, including addressing questions around sharing information across the workforce system (including with local workforce development boards), the permissibility of sharing information with federally recognized Indian tribes, data warehousing, the use of contractors/subcontractors, and updates to recognize the evolution in IT. In particular, since the part 603 confidentiality and disclosure requirements were last significantly revised in 2006, both the public workforce development system and IT infrastructure have changed substantially. Given these changes, part 603 could be revised to better support UC stakeholders by increasing clarity and addressing more modern scenarios in which State UC information is stored and disclosure of confidential UC information may be requested. The Department also solicits comment on the utility of future regulatory changes that could potentially reduce barriers to data sharing with Federal statistical agencies and other Federal agencies as needed for evidence-based research and evaluation, performance, and administration purposes. Finally, the Department intends to update some outdated terminology used in part 603. For example, part 603 currently includes in several places outdated references to the "food stamp program," which should be revised to reference the Supplemental Nutrition Assistance Program (SNAP).

III. Regulated Community: Who is the Department Requesting Provide Information?

The Department is seeking from the public information and suggestions relating to potential revisions to 20 CFR part 603, the Federal regulations governing the confidentiality and disclosure of State UC information. Interested stakeholders likely will include State UC agencies (including groups representing State UC agencies), State and local workforce development boards (including groups representing workforce development boards), federally recognized Indian tribes, workers and worker advocates, employers and employer advocates, data privacy advocates, educational institutions, private sector entities (for example, research institutions and third-party vendors), any potential requestor of confidential UC information, and others.

IV. Terms Used in this Request for Information

This section defines several key terms used throughout this RFI to aid commenters in responding to the Department's questions.

Claim information means information about (1) whether an individual is receiving, has received, or has applied for UC; (2) the amount of compensation the individual is receiving or is entitled to receive; and (3) the individual's current (or most recent) home address (§ 603.2(a)).

Confidential UC information means any UC information required to be kept confidential under § 603.4 (What is the confidentiality requirement of Federal UC law?) (§ 603.2(b)).

Public official means (§ 603.2(d)):

- (1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

- (2) Public postsecondary educational institutions established and governed under the laws of the State.²
- (3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.
- (4) The chief elected official of a local area as defined in WIOA sec. 3(9).
- (5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

State means a U.S. State, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands (§ 603.2(f)).

State UC agency means an agency charged with the administration of the State UC law (§ 603.2(g)).

State UC law means the law of a State approved under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)) (§ 603.2(h)).

Unemployment compensation (UC) means cash benefits payable to individuals with respect to their unemployment (§ 603.2(i)).

UC information and *State UC information* means information in the records of a State or State UC agency that pertains to the administration of the State UC law, including State wage record reports collected under the IEVS that are obtained by the State UC agency for determining UC monetary eligibility or are downloaded to the State

² These include the following: (1) Institutions that are part of the State's executive branch. This means the head of the institution must derive their authority from the Governor, either directly or through a State workforce development board, commission, or similar entity established in the executive branch under the laws of the State. (2) Institutions which are independent of the executive branch. This means the head of the institution derives their authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor. (3) Publicly governed, publicly funded community and technical colleges.

UC agency's files as a result of a crossmatch but does not otherwise include those wage reports (§ 603.2(j)).

Wage information means information in the records of a State UC agency about the (1) wages paid to an individual; (2) Social Security account number(s) of such individual; and (3) name, address, State, and the Federal employer identification number of the employer who paid such wages to such individual (§ 603.2(k)).

V. Requests for Public Comment

Through this RFI, the Department is soliciting public input relating to the disclosure of confidential UC information under the Department's regulations governing the confidentiality and disclosure of State UC information (29 CFR part 603).

Submissions may include, but are not limited to, written narratives that answer the questions provided in this RFI; quantitative or qualitative data analysis, reports, or studies, and other methodologies, whether published or unpublished, relevant to the required or permissive disclosure of confidential UC information and related data protections; and any other way in which the public recommends the Department revise or update any of the part 603 regulations. The information received in response to this RFI will inform and be considered by the Department as it reviews the part 603 regulations, which may result in the development of an NPRM to revise the regulations.

Responses to this RFI are voluntary and may be submitted anonymously. Written narratives providing factual or evidence-based information also should provide citations of sources, and copies of and links to the source material should be provided, where applicable.

Accordingly, the Department invites the public to answer one or more of the questions below in their submission.

A. Part 603 Definitions

The definitions of terms that apply to 29 CFR part 603 currently are defined at § 603.2.

1. Are there any terms that should be added to § 603.2? If so, what is the recommended definition for any such new § 603.2 term? If you are recommending defining a new term, please provide the reason the term needs to be defined. If you are proposing a revised or new definition, please explain why you recommend this definition or changes.

Claim Information (§ 603.2(a))

2. When State UC agencies receive requests for UC information disclosures, what types of specific claim information are State UC agencies being requested to disclose and for what purposes are the disclosures being requested? For example, are UC information disclosure requestors requesting all information regarding a claim, confirmation that a UC claim exists, all UC information associated with a specific employer, or all UC information associated with a specific time period? Are requestors requesting that State UC agencies provide names and Social Security numbers as part of the request?

Public Official (§ 603.2(d))

Federally Recognized Indian Tribes

3. If the Department revises the definition of “public official” to include federally recognized Indian tribes in the definition to allow such tribes the same access to confidential UC information as a public official has under the existing regulation, how many additional annual disclosure requests would State UC agencies expect to receive?

4. How, if at all, are Tribal governments currently accessing confidential UC information?

5. What types of confidential UC information would federally recognized Indian tribes request from State UC agencies if such tribes were considered “public officials”?

6. For what purposes would federally recognized Indian tribes request confidential UC information from State UC agencies, and what types of entities within Tribal governments would need access to such information?

7. What benefits or cost savings would Tribal governments obtain if they had access to the same confidential UC information as local, State, or Federal Government agencies?

8. Would Tribal governments potentially incur costs associated with requesting, receiving, processing, or storing confidential UC wage information (for example, relating to costs associated with making requests as well as maintaining data security)? If so, what types and amounts of costs would they incur and how would these costs affect the Tribal government, if at all?

*Local Workforce Development Boards*³

9. Are local workforce development boards prevented from receiving confidential UC information for their official duties? If yes, please explain why (for example, the structure of a local workforce development board prevents it from being considered a public official).

10. For what purposes do local workforce development boards request confidential UC information?

11. For what purposes would one-stop operators⁴ or their agents or contractors request confidential UC information?

³ A local workforce development board established under section 107 of WIOA.

⁴ An entity(ies) designated or certified under section 121(d) of WIOA.

12. For what purposes would other Workforce Innovation and Opportunity Act (WIOA) local service providers request confidential UC information?

13. In your experience, how many local workforce development boards are structured as nonprofit organizations versus State or local governmental entities?

14. Are there any observable trends, over time, in the way that local workforce development boards are structured or have membership qualifications changed? Are you aware of any efforts or proposals to change the structure of local boards in a particular State or locality?

15. How is confidential UC information currently being shared with local workforce development boards?

Private Postsecondary Educational Institutions⁵

16. Should private postsecondary educational institutions be given access to confidential UC information? Why or why not?

17. For what purpose would a private postsecondary educational institution request confidential UC information?

18. What types of private postsecondary educational institutions make disclosure requests?

19. Are private postsecondary educational institutions currently receiving confidential UC information? If so, under what conditions?

Federal Statistical and Other Agencies

20. Should confidential UC information be subject to the requirements of 20 CFR part 603 when disclosed for evidence-based research and evaluations, including but not limited to activities authorized under the Foundations for Evidence-Based Policymaking Act of 2018 (“Evidence Act”)? Why or why not?

⁵ As used in this context, “private postsecondary educational institution” refers to post-secondary educational institutions that are not operated by State or local governmental entities.

21. For which purposes should the regulations permit disclosures to Federal statistical or other agencies?

22. What safeguards and limits should be in place for disclosures to Federal Government entities, including Federal statistical and other agencies, for evidence-based research, evaluations, and other purposes?

Other

23. Are there other entities to which it would be beneficial to disclose confidential UC information under certain circumstances (including disclosures to publicly funded grantees)? If so, what are those entities and what would be the benefits and costs of disclosing confidential UC information to such entities?

24. For public officials with civil enforcement authority for another law (for example, laws involving workplace rights or employment taxes), are States currently disclosing confidential UC information? If so, how? What kinds of agencies are making use of these disclosures? Please provide any proposed changes to effectuate this work and describe how these changes would support this effort.

25. Would it be beneficial for the Department to define in § 603.2 which individuals or entities constitute agents or contractors of public officials (for example, an employee of a public official carrying out their official duties as an agent, or a research agency hired by a public official to carry out their official duties as a contractor)? If so, please provide any recommended definition(s) and an explanation for why this is the recommended definition.

26. Are any public officials prevented from receiving confidential UC information for their official duties? If yes, please explain why.

B. Permissible Disclosures

Section 603.5 (What are the exceptions to the confidentiality requirement?) currently addresses the scenarios in which State UC agencies are permitted (but not

required) to disclose confidential UC information. The Department is considering changing the structure of § 603.5 to address permissible disclosures by the type of entity to which the disclosure would be made (for example, public officials, governmental entities, research institutions, private entities, program evaluators), rather than addressing individual categories of permissible disclosures.

27. Would State UC agencies find it helpful for § 603.5 to further clarify what it means for a disclosure to “not interfere with the efficient administration of the State UC law” (see introductory sentence of § 603.5)? If so, what clarifications would be helpful?

28. Have State UC agencies received requests for disclosure of confidential UC information (including specific elements of UC data) that do not fall within the existing permissible disclosure requirements but for which State UC agencies or other stakeholders believe State UC agencies should be able to disclose? If so:

- a. What are the nature of those disclosure requests and what entities are making the requests?
- b. What is the need, benefit, and estimated cost that would be associated with disclosure of confidential UC information to those entities?

Informed Consent Disclosures (§ 603.5(d)(2))

29. How do State UC agencies currently implement their informed consent disclosure procedures? What are the parameters in which a State UC agency permits an informed consent disclosure to occur?

30. Do State UC agencies require updated informed consent from claimants after a certain period of time? If yes:

- a. What is the period of time?
- b. How do State UC agencies effectuate these updates?

- c. Does the requirement to specify the period of time unnecessarily limit the utility of data obtained via disclosures by informed consent?
If so, how?

Agents or Contractors of Public Officials (§ 603.5(f))

31. For purposes of permissible disclosures of confidential UC data to public officials for the performance of their official duties, what are the typical industries of the agents or contractors (including, but not limited to, IT) that public officials hire to assist them in the performance of such duties? Are the agents or contractors using subcontractors to perform work for public officials?

32. Are the agents or contractors of public officials redisclosing confidential UC information obtained on behalf of the public official in performance of the public official's duties? If so, under what circumstances and to what entities? Under what circumstances would public officials need to redisclose confidential UC information and to what entities?

33. Are there any differences in how State law defines the terms "agent" and "contractor"? If so, what are the differences?

Bureau of Labor Statistics (BLS) Disclosures (§ 603.5(g))

34. Current § 603.5(g) specifies that permissible disclosures of confidential UC data to BLS for statistical purposes are not subject to the part 603 confidentiality regulations. Should information collected exclusively for statistical purposes under a cooperative agreement with BLS be subject to the requirements of 20 CFR part 603? Why or why not?

35. What safeguards and limits on redisclosure should be in place for disclosures to BLS for statistical purposes?

Costs Associated with Permissible Disclosures

Costs for Disclosure Recipients

36. What are the potential costs associated with an entity receiving confidential UC information under a new § 603.5 permissible disclosure if they have never received confidential UC information in the past (for example, costs of developing an agreement with the State UC agency, costs associated with ensuring required data security and safeguard requirements)?

Costs for State UC Agencies

37. What is the average cost per disclosure request for permissible disclosures?

38. How would an increased number of permissible disclosure requests impact a State UC agency's staff or infrastructure costs?

Direct Access

In certain limited circumstances, some State UC agencies may allow recipients of confidential UC information direct access to certain components of the State UC databases. For example, State UC agencies may allow the State health and human services agency direct access to specific data in the State UC databases for the limited purposes of benefits eligibility determinations, reducing burden for claimants and improving payment accuracy for agencies. One example is when an individual applies for Supplemental Nutritional Assistance Program (SNAP) benefits, the State SNAP agency will need to verify an individual's income to determine SNAP benefit eligibility.

39. Do State UC agencies permit ongoing or direct access to certain confidential UC data to certain entities outside of the State UC agency? If so:
- a. Which entities are permitted ongoing or direct access?
 - b. How many direct access users have State UC agencies permitted?
 - c. For how long do State UC agencies grant ongoing or direct access?

40. What are the data risks associated with allowing continuous access to limited types of confidential UC data for certain permissible disclosures? What recommendations do you have for mitigating these data risks?

41. What are the safeguards and security requirements that State UC agencies currently require for disclosure recipients who access confidential UC data via ongoing or direct access? Are there other safeguards or security parameters that should be considered?

C. Disclosures by the UC Agency for the Proper Administration of the State's UC Program

Paragraph 603.6(a) specifies that the “disclosure of all information necessary for the proper administration of the UC program” in a State is currently exempt from the part 603 confidentiality requirements. The Department interprets section 303(a)(1) of the SSA’s “methods of administration” provision in 20 CFR part 603.4(b) to require both the disclosure of information necessary for the proper administration of the UC program and that entities that receive confidential UC information must, to the extent possible, keep that information confidential. Since this provision was initially established in 2006, the functionality and contractual landscape of States’ administration of State UC programs have changed extensively. The questions below attempt to explore if there is a need for clarity relating to disclosures by a State UC agency for the proper administration of the State’s UC program.

42. In the administration of the State’s UC program, do State UC agencies disclose confidential UC information to anyone other than State employees (for example, vendors or non-merit staffed service providers) for the purpose of outsourcing activities such as collections, IT, and offsite data storage?

43. In addition to the disclosures listed in the question immediately above, do State UC agencies disclose confidential UC information to any other entity under the authority of § 603.6(a)?

44. If the Department were to amend part 603 to specify safeguards, security requirements, and/or agreement requirements for § 603.6(a) disclosures, how (if at all) would this impact the way in which State UC agencies (and/or their contractors) approach such disclosures or the cost of such disclosures?

45. What data security safeguards and measures would you recommend for disclosures associated with the authority in § 603.6(a)?

46. Do State UC agencies require that a written, terminable agreement be in place before any disclosures under the authority of § 603.6(a)?

47. How many individual wage records are State UC agencies currently disclosing under the authority of § 603.6(a) on an annual basis? How many individual wage records requests do State UC agencies receive on an annual basis?

48. Do State UC agencies incur costs specifically associated with disclosures made under the authority of § 603.6(a)? If so, please describe and quantify (if possible).

D. Required Disclosures

Section 603.6 (What disclosures are required by this subpart?) currently addresses disclosures of confidential UC information that are required by Federal law. Specifically, § 603.6(b) and (c) currently address required disclosures of confidential UC information.

49. What are the potential impacts that would be associated with the Department specifying additional security, safeguards, or agreement requirements related to required disclosures or potential redisclosure to the entities for which disclosure is required under § 603.6(b)?

50. Do State UC agencies currently implement additional security, safeguards, or agreement requirements related to required disclosures or potential redisclosure?

51. Which, if any, of the current requirements are burdensome for State UC agencies?

52. What kind of inquiries do State UC agencies receive relating to required disclosures under § 603.6(b)? How often does the State UC agency receive such inquiries?

53. What clarifications could the Department make relating to § 603.6(b) required disclosures that could minimize State UC agency costs associated with fielding inquiries relating to required disclosures?

54. For programs related to the impacts of trade agreements on the workforce system, are there currently any barriers encountered with regard to receiving disclosures of confidential UC information for program operation and utilization?

55. Are the case management systems used by employees of States or local workforce development areas to administer the workforce-related programs provided by the State workforce agency? If not, are the workforce-related case management systems contracted individually by the local workforce development boards?

56. Are the entities operating the workforce-related case management systems functioning as an agent or contractor of either the State or a local workforce development board?

E. Costs

Section 603.8 enumerates the conditions under which State UC agencies may use Federal UC administrative grant funds to pay for the costs associated with making any disclosure of UC information.

57. Are there any provisions in the current part 603 related to the payment of costs for which additional clarification or enumeration would be helpful?

58. What is the average annual number of requests to disclose confidential UC information received and granted by a State UC agency?

59. What is the minimum cost for a State UC agency to process a request to disclose confidential UC information? Please describe how any such minimum cost figures were derived.

60. What is the average cost for a State UC agency to process a request to disclose confidential UC information? Please describe how any such average cost figures were derived.

61. Do State UC agencies have information on the average cost per record for the agency to disclose an individual UC record? If so, what is the average cost per record for disclosure?

62. When calculating an “incidental amount of staff time” and “nominal processing costs,” what factors do State UC agencies take into consideration?

63. Are there State laws (statute or regulations) that govern what State UC agencies must deem an “incidental amount of staff time” or “nominal processing costs” under § 603.8(b)? If so, please provide statutory or regulatory citations to such provisions.

64. Would it be helpful if the Department defined explicitly a financial threshold above which would be considered “more than an incidental amount of staff time” under § 603.8(b)? If yes, what should such a threshold be and why?

65. Would it be helpful if the Department defined explicitly a financial threshold above which would be considered more than “nominal processing costs” under § 603.8(b)? If yes, what should such a threshold be and why?

66. Would a part 603 specification of a threshold of “incidental amount of staff time” or “nominal processing costs” impact the number of requests for disclosure of confidential UC information that a State UC agency receives annually? If so, how?

67. To the extent that a State UC agency deems a disclosure to require more than “an incidental amount of staff time” and “nominal processing costs” and, therefore,

to not be payable with Federal UC administrative grant funds, under what circumstances does the State UC agency pay for such costs versus requiring the disclosure recipient to pay the State for the above incidental costs of disclosure?

68. How many disclosure requests are denied or declined because disclosure recipients are not willing to reimburse the State for the costs of disclosure?

69. The regulation at § 603.8(d) currently provides that “[t]he requirement of payment of costs is met when a State UC agency has in place a reciprocal cost agreement or arrangement with the recipient.” Would it be helpful if the Department clarified what constitutes a reciprocal benefit? If so, how and why?

70. Are State UC agencies making disclosures of confidential UC information that they deem to have a reciprocal benefit with the recipient and thus the costs are incurred by the State’s Federal UC administrative grant? If so, what is the nature of such disclosures?

71. What percentage of State UC agency disclosures of confidential UC information currently involve a reciprocal benefit?

F. Safeguards and Security

Section 603.9 specifies the safeguards and security requirements that a State or State UC agency must require of a recipient of confidential UC information to protect the information disclosed against unauthorized access or redisclosure. This section also requires that the State or State UC agency must subject the recipient to penalties provided by State law for unauthorized disclosure of confidential UC information (§ 603.9(a)).

72. Should the Department modify any of the safeguards and security requirements enumerated in § 603.9(b) and (c) related to disclosures of confidential UC information? If so, how and why?

73. Beyond the safeguards and security requirements enumerated in § 603.9(b) and (c), are there any additional safeguards or security requirements that the

Department should require a State UC agency to impose on a recipient of confidential UC information? If so, what requirements should be added and why? Are there requirements that are outdated or overly burdensome?

Safeguards Required of Recipients (§ 603.9(b))

74. Do State UC agencies currently require that recipients of confidential UC information store data in a specific way? If yes:

- a. Are these requirements enumerated in State statute, regulations, or State policy? If so, please explain.
- b. For what types of disclosures do State UC agencies impose requirements relating to storage of data by recipients of confidential UC information?
- c. What requirements do you recommend the Department impose relating to data storage? For example, do you recommend requirements related to on-site data storage, cloud storage, centralized data storage with segregated confidential data, or some combination of these approaches?

75. What is the maximum amount of time that State UC agencies allow recipients of confidential UC information to retain or store data? Should the Department specify a length of time that a recipient may retain confidential UC information? If yes, what is an appropriate length of time and why? Would this create additional burden for States or recipients of this data?

76. Should the Department restrict or limit whether or how a recipient of confidential UC information may use that information for a purpose other than those specifically outlined in the § 603.10 disclosure agreement? Why or why not?

77. Should the Department specify how a recipient of confidential UC information must dispose of (i.e., return or destroy) the information once the purpose of

the disclosure is served (i.e., fulfilled or completed)? If yes, what should constitute sufficiently secure disposal of confidential UC information?

78. When should the purpose of a disclosure of confidential UC information be considered served (i.e., fulfilled or completed)?

79. Should the Department require State UC agencies to conduct audits or inspections of recipients of confidential UC information to ensure that the requirements of the State's law and the disclosure agreement are being met? If no, why not? If yes:

- a. Should the Department specify how a State UC agency must audit or inspect recipients of confidential UC information to ensure that the requirements of the State's law and the disclosure agreement are being met?
- b. What should be the frequency and conditions of such audits or inspections?

80. If the Department were to specify changes to safeguards or security requirements that State UC agencies must impose on recipients of confidential UC information, how would revised safeguard requirements impact current or future recipients of confidential UC information? How would revised safeguard requirements impact the costs to State UC agencies or recipients of confidential UC information? Examples of changes to safeguard requirements may include the length of time that confidential UC information may be retained, restrictions on whether the recipient can redisclose or use data for a purpose other than that specifically outlined in the agreement, provisions governing disposal of data, auditing/inspection by the State UC agency.

Redisclosure (§ 603.9(c))

81. Should a recipient of confidential UC information be permitted to redisclose the information to an entity not specifically named in the § 603.10 disclosure agreement? If so, under what conditions?

82. Have State UC agencies encountered challenges relating to requests involving a redisclosure by a public official to an agent or contractor of the public official? If so, please describe.

83. How often are such redisclosures (to an agent or contractor) sought by public officials?

84. Should public officials requesting confidential UC information continue to be held accountable for the actions of their agents or contractors? Why or why not?

85. What is the average cost or time burden associated with redisclosures of confidential UC information?

86. Should the recipient of redisclosed confidential UC information be permitted to further disclose to another entity for an additional purpose? If yes, what restrictions, if any, should apply?

Data Storage

The questions below are intended to address how State UC agencies currently store confidential UC information to administer the State's UC law.

87. Do State UC agencies use State-owned or -administered IT systems or non-State owned or -administered IT systems to store confidential UC information? Do you have recommendations for the system a State UC agency should use? Does the use of State-owned or -administered IT systems or non-State owned or -administered IT systems complicate or improve any issues associated with confidential UC data storage?

88. Do State UC agencies use cloud storage to store confidential UC information? Does cloud infrastructure complicate or improve any issues associated with confidential UC data storage?

89. If State UC agencies store confidential State UC data on a system that is not State-owned or -administered, please provide a general description of the system and the State UC agency's contractual relationship with the vendor(s) or service provider(s).

90. Have there been data breaches or attempted data breaches associated with confidential UC information stored on State-owned and -administered IT systems? Have there been data breaches associated with confidential UC information stored on non-State owned or -administered IT systems? If so, what is the average annual number of data breaches or attempted data breaches associated with disclosure of confidential UC information?

91. If the Department were to specify security requirements around State UC agency use of State-owned and -administered IT systems or non-State-owned and -administered IT systems, how would this impact State UC agencies, if at all? What are the anticipated impacts of any changes that State UC agencies would need to make that they were not already planning?

The questions below are intended to address how State UC agencies may make confidential UC information available to third-party vendors or other data warehousing providers for purposes other than administering the State's UC law (for example, State longitudinal data systems).

92. What types of arrangements do State UC agencies have with contractors to store confidential UC information in data warehouses or other offsite storage?

- a. What are the entities with which State UC agencies contract for such services?
- b. Provide a general description of the data warehouses or offsite data storage utilized by State UC agencies.
- c. What data security and safeguard requirements would you recommend State UC agencies require of such third-party entities for offsite storage?
- d. How, if at all, do arrangements with data warehouses or offsite storage ensure confidential UC information is not comingled with other data?

- e. How, if at all (not including specific security measures currently in use), do such arrangements with third-party data storage entities address data breach risks?

93. Where State UC agencies have data storage relationships with third parties, does the third-party data storage entity administer or run disclosure queries on behalf of the State UC agency? If so:

- a. Are there costs associated with such data storage relationships? If so, what is the source of the funds used to pay for those costs?
- b. What types of disclosures of confidential UC information does the third-party data storage entity administer and for what purposes?
- c. What is the role of the State UC agency in processing or responding to requests for confidential UC information via the third-party data storage entity? E

94. Have there been data breaches or attempted data breaches associated with confidential UC information stored with third-party data storage entities? If so, what is the average annual number of data breaches or attempted data breaches associated with disclosure of confidential UC information when a third-party data storage entity is involved?

G. Agreements

Section 603.10 enumerates the requirements associated with the written, enforceable, terminable agreement that a State UC agency must enter into with agencies or entities requesting disclosure of confidential UC information.

95. How many active confidential UC information disclosure agreements does your State UC agency currently have in effect?

96. On average, how many active confidential UC information disclosure agreements do State UC agencies have in effect each year?

97. On average, how many new confidential UC information disclosure agreements do State UC agencies execute each year?

98. Do State UC agencies always require an agreement to be in place before disclosing confidential UC information? For what disclosures (if any) do State UC agencies not require an agreement?

99. Do States have standardized minimum requirements for all confidential UC information disclosure agreements (for example, a template is utilized as the starting point for all disclosure agreements)? If so, what language is included in the template? Would it be helpful if the Department provided such a template?

100. For State UC agencies:

- a. What is the process associated with executing a new confidential UC information disclosure agreement with disclosure recipients? For example, how much unique language must be developed?
- b. What types of State agency staff (including State agency attorneys) are involved in the drafting, review, and approval processes?
- c. What is the average time burden or cost associated with executing a new confidential UC information disclosure agreement with disclosure recipients?
- d. What is the average time burden or cost associated with modifying an existing confidential UC information disclosure agreement?

101. For confidential UC data recipients:

- a. What is the process associated with executing a new confidential UC information disclosure agreement with the State UC agency? For example, how much unique language must be developed?
- b. What types of staff or attorneys are involved in the drafting, review, and approval processes?

- c. What is the average time burden or cost associated with executing a new confidential UC information disclosure agreement with the State UC agency? Does the time burden or cost prevent potential recipients from pursuing access?
- d. What is the average time burden or cost associated with modifying an existing confidential UC information disclosure agreement? Does the time burden or cost prevent participants from pursuing modifications?

102. How are State UC agencies currently ensuring compliance with disclosure agreements? What proportion of confidential UC information disclosure agreements do State UC agencies actively monitor for compliance?

103. What is the average annual cost associated with monitoring for compliance?

H. Notifications to Claimants and Employers

Section 603.11 requires State UC agencies to periodically notify UC claimants that their confidential UC data may be requested and utilized for other governmental purposes (§ 603.11(a)). States also must notify every employer subject to the State's UC law that wage information and other confidential UC information may be utilized for other governmental purposes (§ 603.11(b)).

104. How do State UC agencies currently provide § 603.11 required notifications?

105. Do States or other stakeholders believe the notification requirements in § 603.11 are sufficient or burdensome, or should additional notifications to claimants and employers be required? If so, please describe.

106. Do States or other stakeholders believe that, to the extent notifications currently provided do not currently include references to data transfers or third-party

storage, notifications should include references to data transfers and third-party storage?

Why or why not?

107. How would any changes to § 603.11 notification requirements impact the time burden or costs to State UC agencies associated with notification requirements?

I. State Implementation of Part 603 Changes

108. What types of changes to part 603 would require a State to amend its existing State law (statutory or regulatory provisions)? What specific State laws or regulations might require changes if the Department revises part 603 requirements?

109. If the Department's part 603 regulatory changes would require a State to amend its existing State law (statutory or regulatory provisions), what is the timeline that the Department should consider for a State to make such changes?

J. Federal UC Program Oversight and Audits

The regulation currently requires State UC agencies to share confidential UC information with OIG for investigative purposes and permits disclosure of confidential UC information to OIG for the purposes of UC program oversight and audits. ETA is considering requiring States to disclose confidential UC information to OIG at regular intervals, as described in questions 42-44 above. In recent years, OIG has made requests for access to State confidential UC information to assist with its oversight and audits of the UC program. In response to these requests, ETA issued Training and Employment Notice (TEN) No. 05-22, which reminds States of OIG's authority under the Inspector General Act (IG Act) to access information necessary for carrying out its duties and responsibilities under the IG Act and strongly encourages States to comply with data requests made by OIG. As noted, providing the requested data to OIG does not conflict with Federal regulations regarding the permissibility of disclosing confidential UC information for the purposes of UC program oversight and audits.

110. Are there currently any impediments to OIG getting access to confidential UC information for the purposes of UC program oversight and audits? This can include statutory, logistical, operational, financial, or any other impediments.

111. Should there be revisions to the regulation to explicitly address that written agreements are not required for disclosure to OIG, consistent with current guidance? If so, please explain why.

112. What, if any, safeguards should be in place for disclosures to OIG for purposes of UC program oversight and audits?

113. Under the current part 603, State UC agencies are permitted to disclose confidential UC information of the purposes of UC program oversight and audits. If State UC agencies were required to disclose confidential UC information to OIG for purposes of UC program oversight and audits, are there any considerations that the Department should be aware of? If so, please describe.

114. If the Department were to specify safeguards, security requirements, or agreement requirements associated with disclosure of confidential UC information to OIG for purposes of UC program oversight and audits, would there be any time burdens or other costs incurred by State UC agencies?

115. How often do States receive OIG requests for confidential UC information for purposes of UC program oversight and audits?

K. Miscellaneous

116. Are you aware of any access concerns related to State UC agency staff participation in Federal UC program oversight and audits (for example, participation in Benefit Accuracy Measurement, Benefits Timeliness and Quality, or other Federal reviews)? If so, please describe the concerns.

117. Are there any methods that the Department could utilize to quantify the reduction in risk associated with enhanced protections for confidential UC information?

118. When disclosing confidential UC information, do State UC agencies have established protocols for masking/suppressing data to comply with part 603? If so, please generally describe.

119. To the extent that established protocols for masking/suppressing confidential UC data exist, are there methods the Department should consider to ease burden on State UC agencies while still protecting the underlying confidential UC information?

120. Are there industry-accepted best practices for suppressing or masking confidential UC information?

121. If the Department revises part 603, what penalties might State UC agencies incur associated with existing contracts?

VI. Conclusion

The Department invites interested parties to submit comments, information, data, and supporting materials based on the questions provided in this RFI. The Department has provided the list of questions above as a framework for the scope of this RFI and invites any submission from interested stakeholders that addresses some or all of these questions or provides other useful information in addition to responses to these questions for the Department's consideration.

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